

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA BROADBAND INITIATIVE	DOCKET NO. RMU-03-9
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ORDER COMMENCING RULE MAKING

(Issued July 3, 2003)

Pursuant to the authority of Iowa Code §§ 17A.4 and 476.2 and 2003 Iowa Acts, Senate File 368, Section 6, the Utilities Board proposes to adopt the amendments attached hereto and incorporated by reference. These proposed rules add new chapter 199 IAC Chapter 43(476). The reasons for proposing this chapter are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making, identified as Docket No. RMU-03-9, is commenced for purposes of receiving comments upon the proposed rules attached to this order.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 3rd day of July, 2003.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code sections 17A.4 and 476.2 and 2003 Iowa Acts, Senate File 368 section 6, the Utilities Board (Board) gives notice that on July 3, 2003, the Board issued an order in Docket No. RMU-03-9, Iowa Broadband Initiative, "Order Commencing Rule Making," to receive public comment on proposed rules relating to the availability of advanced telecommunications services throughout Iowa.

These rules are intended to implement a new statute, 2003 Iowa Acts, Senate File 368, which became effective on July 1, 2003. Entitled "Iowa Broadband Initiative," the new statute allows rate-regulated local exchange carriers to implement an increase in monthly rates for residential or business dial tone access service lines by an amount not to exceed two dollars per month per line. The revenue from this increase is to be used to provide advanced telecommunications services in areas where advanced telecommunications services are not currently available at affordable rates in all or a substantial part of the carrier's local exchanges.

A rate-regulated local exchange carrier electing to participate in the broadband initiative is directed to file a proposed plan for the use of the revenue resulting from the price increase. The statute provides the Board with the authority to adopt rules to implement its review process, including rules that specify the initial plan filing requirements, further defines the public interest, and identifies some of the factors that the Board will consider in reviewing plans.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before October 3, 2003, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa, 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on Tuesday, October 21, 2003, in the Board's hearing room at the address listed above. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made

This proposed rule is intended to implement Iowa Code section 476.2 and 2003 Iowa Acts, Senate File 368.

The following New Chapter is proposed.

Add **new** chapter 199—43(476) as follows:

Chapter 43

Iowa Broadband Initiative

199—43.1(476) Authority and Purpose

These rules are intended to implement Iowa Code section 476.97(12), relating to the Iowa Broadband Initiative.

The purpose of these rules is to provide guidelines for rate-regulated telecommunications carriers electing to participate in the Iowa broadband initiative

and to evaluate the appropriateness of each carrier's broadband initiative revenue plan.

199—43.2(476) Definitions. The following words and terms, when used in this chapter, shall have the meaning shown below:

“Advanced telecommunications services” means the telecommunications infrastructure capable of delivering a data transmission speed of at least 200 kilobits per second in both directions.

“Affordable rates” is presumed to mean the current price for advanced telecommunications services being charged for similar services in areas with multiple broadband providers, as demonstrated by published or advertised prices. However, this presumption may be rebutted in appropriate circumstances.

“Plan” encompasses 24 consecutive months of projects for the deployment of advanced telecommunications services.

“Project” means individual or logically-grouped proposals for the deployment of advanced telecommunications services.

“Public interest” includes, but is not limited to, the effective deployment, at the lowest reasonable expenditure of broadband initiative revenues, of advanced telecommunications services to the public at affordable rates and the fostering of economic development through the increased availability of advanced telecommunications services.

199—43.3(476) Applicability. Rate-regulated telecommunications carriers electing to participate in the Iowa broadband initiative shall file for the board's review and approval a proposed plan for using the revenue each carrier will receive from the

price adjustment permitted by Iowa Code section 476.97(12)"c." The plan shall include economically-achievable projects designed to expand advanced telecommunications services into areas of the state where advanced telecommunications services are currently unavailable. Each plan shall cover a time period not to exceed 24 months.

199—43.4(476) Procedures. The following procedures shall govern the board's review of broadband initiative plans:

43.4(1) Written notice of a broadband initiative plan. Prior to filing its initial broadband initiative plan but not more than 62 days prior to filing, a carrier shall mail or deliver a written notice of its filing to all affected customers. The notice shall be submitted to the board for approval not less than 30 days prior to the proposed notification of customers. The notice shall, at a minimum, include the following elements:

- a. The actual monthly price increase proposed to be implemented pursuant to Iowa Code section 476.97(12)"c" and the proposed implementation date.
- b. A statement that the carrier will be filing a broadband initiative plan with the board pursuant to Iowa Code section 476.97(12)"c."
- c. A brief description of the proposed broadband initiative plan and the estimated cost of the proposed plan.
- d. A brief description of the board's review process.
- e. The telephone numbers and addresses of utility personnel, the board, and the consumer advocate for the customer to contact with questions.

f. A statement describing the application of a credit, in an amount equal to the amount of the proposed residential service increase, to the monthly local exchange service rate for qualified applicants for low-income lifeline assistance programs.

43.4(2) Docketing. The board shall issue an order approving, rejecting, or docketing a broadband initiative plan no later than 90 days after the plan is filed with the board. Supporting testimony, exhibits, and workpapers shall be filed with each application for approval of a broadband initiative plan.

43.4(3) Price adjustments pursuant to Iowa Code section 476.97(12)"c." A carrier may implement a price adjustment for selected classes of customers. The price adjustments for any particular class of residential or business customers shall be a uniform increase across the Iowa service territory unless otherwise ordered by the board. A carrier electing to participate in the broadband initiative shall file a revised tariff with the board reflecting the proposed price adjustments for residential or business customers allowed by Iowa Code section 476.97(12)"c."

43.4(4) Interim approval. While the plan is under review, the board may grant interim approval to specific projects included in the proposed plan. Projects to be considered for interim approval may include, but are not limited to, the deployment of advanced telecommunications services into areas where advanced telecommunications services are unavailable in any part of the carrier's local exchanges.

43.4(5) Modification of a plan. The consumer advocate, the carrier, or a third-party intervenor may propose approval, modification, or rejection of a carrier's plan at any time. The board, on its own motion, may consider modification of a carrier's plan.

All applications to modify a plan shall be filed in the same docket in which the original plan was filed. The board shall issue an order docketing, approving, or rejecting a proposed modification within 30 days of the date the proposed modification is filed. If the board rejects or modifies a carrier's plan, the board may require the carrier to file a modified plan and may specify the minimum acceptable contents of the modified plan.

a. Reasons for modifying or rejecting a plan may include, but are not limited to, the following:

1. A demonstration that advanced telecommunications services are already available at affordable rates in a substantial portion of the area(s) where the services are proposed to be deployed;

2. A demonstration that significant investment by a third party has been committed for the deployment of advanced telecommunications services in one or more of the area(s) specified in the plan and advanced telecommunications services will be offered in those areas within a reasonable time; or

3. A demonstration that the deployment of advanced telecommunications services in one or more of the area(s) specified in the plan may no longer be cost effective.

b. The carrier shall file an application to modify its plan if any one of the following conditions occur or is projected to occur during the life of the plan:

1. The total plan budget has changed or will change by a factor of plus or minus 5 percent.

2. An approved project is proposed to be eliminated or a new project is proposed to be added.

199—43.5(476) Broadband initiative plan requirements. A carrier's proposed plan shall include individual projects spanning 24 consecutive months from the date the plan is filed and an overall plan for extending advanced services to all customers (if that will require more than 24 months) to the extent consistent with technological limitations and the public interest. Each project description shall include the means by which the carrier proposes to provide advanced telecommunications services to customers who currently cannot be offered such services as well as an estimate of the number of potential customers who may benefit as a result of the project. The plan shall also include a description of how the public interest will be met by the plan and a description of the geographic locations where the improvements are proposed. The plan shall include a ranking of projects, or group of projects, depicting the order and areas in which a carrier proposes to deploy advanced telecommunications services.

The plan shall also include a statement whereby the carrier agrees to make available to other carriers, on both a wholesale and an unbundled basis, the services and facilities that result from the implementation of the plan. The wholesale rates and unbundled rates shall be set by the board, which shall consider, among other factors, the extent to which the service or facility was financed by the revenues generated by the rate increase allowed by Iowa Code section 476.97(12)"c."

43.5(1) Description of each proposed project. The description of each proposed project shall include but not be limited to:

- a. The name of the proposed project;
- b. The exchange(s) or area(s), the total number of access lines in the exchange(s) or area(s), and the number of unserved access lines that the project targets;
- c. The proposed improvements and related costs for the project;
- d. The calculation of the total investment divided by the number of additional access lines to be served;
- e. The anticipated date(s) for the deployment of advanced telecommunications services to the exchanges specified in the project; and
- f. A narrative description of the company's reasons for proposing each particular project at this priority level.

43.5(2) Plan and budget categories. The plan and project budgets shall be itemized by proposed costs. Each category shall contain sufficient information to allow the board to perform an adequate analysis of the plan. The plan and project budgets shall be categorized into:

- a. Planning and design costs for each proposed project;
- b. Equipment costs for each proposed project;
- c. Installation costs for the installation of the equipment for each proposed project; and
- d. Other project and plan costs.

43.5(3) Board review. In reviewing the proposed projects, the board shall consider all relevant factors, including but not limited to the following:

- a. Cost efficiency of deployment. The calculation of the total investment divided by the number of additional access lines to be served.
- b. How well the carrier's proposed investments and expenditures serve the public interest, including the upgrading of existing telecommunications infrastructure to permit improved data services for customers who cannot be offered advanced telecommunications services due to their geographic locations.
- c. The availability of external funding sources and committed investments by outside sources.

The Board may approve, reject, or modify the plan. For example, the board may reorganize the project priority list or deny approval of specific projects that fail to meet the public interest test.

199—43.6(476) Upon completion of approved projects. A carrier shall file a final reconciliation report at the conclusion of an approved plan. The reconciliation report shall include total revenues collected, total costs incurred, access lines developed, utilization of service, and pricing of services. Immediately upon completion of the plan and the filing of a reconciliation report, a carrier shall do one or more of the following:

- a. File a continuation plan for board review and approval for the continued use of the revenue resulting from the price increase allowed by Iowa Code section 476.97(12)"c" for further deployment of advanced telecommunications services.
- b. File a rate of return rate proceeding pursuant to Iowa Code section 476.6 to determine new rates.

c. File proposed tariffs for board review and approval to reduce the monthly prices that were adjusted pursuant to Iowa Code § 476.97(12)"c" by an amount equal to the increase.

d. File a refund plan. If, after the completion of the plan, a carrier elects to no longer participate in the broadband initiative, the carrier shall refund all unspent revenues, plus interest, to customers in a manner to be approved by the board.

199—43.9 Confidentiality. A carrier's proposed broadband initiative plan shall not be held as confidential. Supporting information describing the availability of advanced telecommunications services not funded by this initiative may be held confidential pursuant to subrule 1.9(476). The board may request additional information from a carrier during its review of a plan. If the board requests additional information from a carrier, the carrier shall supply the information upon the board's request. The additional information requested may be subject to confidential treatment in accordance with subrule 1.9(476), although plan updates, revisions, and final plans will not be granted confidential treatment.

199—43.10 Project Reports. A carrier shall file a project report with the board 12 months following the board's approval of a broadband initiative plan, interim projects, or tariff for rate increase, whichever comes first and every 12 months thereafter until a final reconciliation report is filed. The project report shall include the following information:

a. A statement detailing the carrier's progress toward completion of its approved plan;

b. A statement identifying the amount of money collected pursuant to Iowa Code section 476.97(12)"c;"

c. A statement identifying the carrier's expenditures for each approved project;

d. A statement identifying the total number of access lines in the exchanges specified in the plan and the access lines made available for advanced telecommunications services; and

e. A narrative statement of the reasons any particular project was not completed as described, proposed, or approved.

July 3, 2003

/s/ Diane Munns
Diane Munns